

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

SB 1189 - HB 1003

February 27, 2013

SUMMARY OF BILL: Requires the assessment of “fair market value” for any property taken by eminent domain to be based on the highest-and-best-use of the property. Requires the determination of highest-and-best-use not be limited to current zoning or land use restrictions presently imposed upon the property.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$40,000,000/Recurring/Highway Fund

Increase Local Expenditures – Exceeds \$10,000/Permissive

Assumptions:

- If the property is currently zoned for agricultural or residential use, the assessment of value shall disregard that zoning and assess the property under the presumption that the property has been zoned or regulated in the category that will permit for the stated purpose of the condemnation.
- According to the Tennessee Department of Transportation (TDOT), the provisions of the bill would place TDOT in violation of Federal law and would render TDOT’s right-of-way acquisitions ineligible for Federal-aid funding.
- According to TDOT, the Federal Highway Administration (FHWA) requires appraisals of property on federally-assisted projects comply with FHWA rules, pursuant to federal law 49 CFR 24.103(a).
- Pursuant to federal law 49 CFR 24.103(a)(2)(i), appraisers are to consider current zoning, present uses of property, and any existing encumbrances on the property.
- According to TDOT, annual expenditures for right-of-way acquisition typically cost \$50,000,000 to \$75,000,000, with the FHWA typically funding 80 percent of the cost.
- Based on these figures, TDOT currently expends \$10,000,000 to \$15,000,000 annually for right-of-way acquisitions through eminent domain.
- In the event federal funding was not given to TDOT for acquisition of right-of-ways, the result would be an estimated recurring increase in state expenditures of \$40,000,000 (\$50,000,000 base total cost for acquisitions - \$10,000,000 current base amount expended by TDOT with the use of federal dollars).
- According to the Municipal Technical Advisory Service (MTAS) and County Technical Assistance Service (CTAS), the provisions of this bill would increase the price paid for a

majority of property taken by eminent domain by local governments; resulting in a recurring increase in local government expenditures.

- The impact to local government expenditures as a result of this bill is dependent upon multiple unknown factors, including but not limited to, the number of instances a local government will use eminent domain, and the difference in land appraisals assessed prior to and after utilizing highest-and-best-use practices when calculating fair market value. Given the extent of unknown factors, determining a precise impact to local governments is difficult; however, the recurring permissive increase in local government expenditures is reasonably estimated to exceed \$10,000 statewide.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise".

Lucian D. Geise, Executive Director

/jrh